

## **Remarks**

Claims 73, 74, 78, and 86 have been amended and claims 91-92 have been cancelled leaving claims 73-90 and 93-95 pending in the application.

Previously pending claims 78, 89, 91 and 92 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Previously pending claim 74 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter. Claims 78 and 74 have been amended, and as amended are believed to be both supported and definite. Claims 91 and 92 have been cancelled. Claim 89 does not recite the "at least one" limitation as indicated by the Examiner and as such is both supported by the originally filed specification and definite. For at least these reasons, Applicant requests these rejections be withdrawn.

Previously pending claims 73, 75-77, 79, 86-88, 90 and 95 were rejected under 35 U.S.C. § 102(b) as being anticipated by Chang (U.S. Patent No. 5,275,695); and previously pending claims 74, 78, 80-85, 89 and 91-94 were rejected under 35 U.S.C. § 103(a) as being obvious in view of the same reference to Chang (U.S. Patent No. 5,275,695). Applicant has amended claims 73 and 86 as indicated herein and in view of such amendments and accompanying remarks, requests the Examiner reconsider the patentability of the amended claims.

The Examiner should appreciate the need to reevaluate the combination of cited references in light of the amendments herein to the

claims. Simply looking in such references or others for the changed or added limitations is not sufficient. Such reevaluation is required because the prior art must suggest to those of ordinary skill in the art, "that they should make the claimed composition or device, or carry out the claimed process." In re Vaeck, 947 F.2d 488, 20 USPQ 2d 1438, 1442 (Fed. Cir. 1991) (emphasis added). Further, the text of 35 U.S.C. §103(a) requires that "the subject matter as a whole" must be obvious rather than select elements. Applicant asserts that, with the claim amendment, the subject matter of the claims is transformed such that if a suggestion or motivation to combine the cited references previously existed, then it does not now. The mere fact that the prior art can be modified does not make the modification obvious "unless the prior art suggested the desirability of the modification." In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). "When prima facie obviousness is established and evidence is submitted in rebuttal, the decision-maker must start over". An earlier decision should not "be considered as set in concrete, and applicant's rebuttal evidence then be evaluated only on its knockdown ability." In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (C.C.P.A. 1976) (emphasis added).

Amended claim 73 for example, now recites a plurality of individual pillars with the specifics of each of the pillars recited. Understandably, Chang does not describe pillars for the notion that pillars of resist comprised by a lower first material having sidewalls within the sidewalls of an upper second material would be logically ineffective as it would be expected that the

pillars would topple rendering the mask ineffective.

For at least the reason that the pending claims recite limitations that are not described by the cited reference, the pending claims are allowable.

Pending claims 73-90 and 93-95 are in immediate condition for allowance and Applicant requests allowance of the pending claims in the Examiners next action. The undersigned is available for telephone consultation at (509) 624-4276 on Monday-Friday between 8-5 (PST) to facilitate prosecution of this application.

Respectfully submitted,

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By: 

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